

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

NO. D-101-CV-2016-00886

JENNIFER DAY

Plaintiff/Appellees,

vs.

CITY OF SANTA FE, and
THE SANTA FE CITY COUNCIL,

Defendants/Appellees.

NOTICE OF APPEAL PURSUANT TO RULE 1-074

Pursuant to Rule 1-074 NMRA, Plaintiff/Appellant Jennifer Day, by her undersigned counsel, hereby appeals from the Santa Fe City Council (the “City Council”) decision and final action of March 9, 2016, which approved and adopted the Order setting forth the City Council’s Findings of Fact and Conclusions of Law denying Ms. Day’s appeal rendered at the City Council meeting of February 24, 2016, in Case No. 2016-07, which Order is attached hereto as Exhibit A.

Plaintiff and Defendants will communicate regarding arrangements for preparation of the record on appeal.

Plaintiffs request that the decision of the City Council be reversed and remanded with instructions and such further relief as the Court deems appropriate.

Respectfully Submitted,

Sommer, Karnes & Associates, LLP
Attorneys for Plaintiffs/Appellants

/s/ Joseph M. Karnes

P. O. Box 2476

Santa Fe, New Mexico 87504-2476

CERTIFICATE OF SERVICE

I certify that the above Notice of Appeal was served by personal delivery to the office of City of Santa Fe Attorney Kelley Brennan and the Santa Fe City Clerk's Office on April 5, 2016.

/s/ Joseph M. Karnes

ITEM # 16-0158

City of Santa Fe
Governing Body
Findings of Fact and Conclusions of Law

Case #2016-07

Appellant – Jennifer Day

THIS MATTER came before the City of Santa Fe (City) Governing Body (Governing Body) for hearing on February 24, 2016, upon the appeal (Appeal) of Jennifer Day (Appellant) from the January 12, 2016 decision (the Decision) in of the City's Historic Districts Review Board (HDRB) denying the Appellant's application (Application) for an exception to apply green stucco to a building at 1244 Camino de Cruz Blanca (Building) located in the Historic Review District.

The record on this Appeal (the Record) includes the following documents:

1. The Verified Appeal Petition filed on January 25, 2016;
2. The report of Land Use Department Historic Preservation Division staff dated December 8, 2015;
3. Those portions of the minutes of the December 8, 2015 HDRB meeting pertaining to the Application, and corrections to those minutes at the January 12, 2016 HDRB meeting;
4. Findings of Fact and Conclusions of Law adopted by the HDRB on January 12, 2016 and filed by the City Clerk with the records of the City as Item #16-0012;
5. Memorandum dated February 15, 2016 for the February 24, 2016 Meeting of the Governing Body to the Members of the Governing Body from Theresa Gheen, Assistant City Attorney, via Kelley Brennan, City Attorney, regarding the Appellant's Appeal from the HDRB's Decision in Case #H-15-106 denying an exception request to apply green stucco to a building located at 1244 Camino de Cruz Blanca, with Exhibits A-I;
6. Three color photographs entered for the Record at the Appeal hearing (Hearing) by HDRB staff;
7. Nine color photographs entered for the Record at the Hearing by Appellant;
8. One map of H-J Districts entered for the Record at the Hearing by Appellant; and
9. City code excerpts entered for the Record at the Hearing by Assistant City Attorney Theresa Gheen.

After conducting a public hearing and having reviewed the Record and heard from City staff and the Appellants, the Governing Body hereby FINDS, as follows:

FINDINGS OF FACT

1. The Governing Body reviewed the Record, heard the report of City staff and statements from Appellant's representative, and received testimony and evidence from the Appellant and members of the public interested in the matter.
2. Pursuant to Santa Fe City Code (SFCC) §14-2.2(F), the Governing Body has the power and authority on appeals of final actions of any Land Use Board to hear *de novo* and

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- decide the matter that is the subject of appeal after giving notice in accordance with the notice provisions of SFCC §14-3.1(H)(4).
3. Pursuant to SFCC §14-3.17(A)(1)(b), final actions of a Land Use Board include a decision made after a public hearing.
 4. The Decision is a final action subject to appeal to the Governing Body to hear and decide the matter.
 5. Notice of the Appeal was properly given in accordance with the notice provisions of SFCC §14-3.1(H)(4).
 6. In 2014, Appellant purchased the Building, a single-family residence, on 1244 Camino de Cruz Blanca.
 7. Appellant owns several house in historic districts, including another residence on Camino de Cruz Blanca in the Historic Review District.
 8. Soon after purchasing the property, Appellant applied stucco as an emergency action after discovering “that the exterior stucco was sliding off the housing in several locations.”
 9. In August 2015, Appellant received a stop-work order on a portal that was being constructed also without a building permit or approval from the HDRB; the order also noted “illegal green stucco.”
In October 2015, Appellant applied for HDRB to retroactively approve the portal and green stucco.
 11. On January 14, 2016, the HDRB adopted Findings of Fact and Conclusions of Law, in which it approved the exception request for the portal and denied the exception request for green stucco.
 12. Pursuant to SFCC §14-5.2(F)(2)(a), design standards in the Historic Review District are triggered “whenever exterior features of *buildings* and other *structures* subject to public view from any public *street*, way or other public place are erected, altered or demolished....”
 13. For publicly visible buildings, “[t]he color of stuccoed *buildings* shall predominantly be brown, tan, or local earth tones.” SFCC §14-5.2(F)(2)(a)(ii).
 14. As a matter of established practice, the Historic Preservation Division and the HDRB define the scope of SFCC §14-5.2(F)(2)(a) to include any place to which the general public has access.
 15. Appellant’s Building is publicly visible from Camino de Cruz Blanca, Wilderness Gate, the main road through St. John’s College, and the parking area for Atalaya trail.
 16. Because Appellant’s Building is a prohibited green color, an exception is required.
 17. Permitting the green stucco color on the Building would damage the character of the district because it is a prohibited color which contrasts with permitted colors in the Historic Review District.
 18. Permitting the green stucco color on the Building is not necessary to prevent a hardship to the Appellant or an injury to the public welfare in that if the Appellant were to have sought a building permit from the Land Use Department or input from the Historic Preservation Division prior to applying the green stucco, the Applicant would have been informed green was a prohibited color; Appellant was required to have sought an exception from the HDRB before applying the green color; and any cost, time or disturbance entailed in correcting the color is a circumstance due to Appellant’s own violation of City code.

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19. Permitting the green stucco color on the Building would not strengthen the unique heterogeneous character of the City, in that it is a prohibited color which contrasts with permitted colors in the Historic Review District.
20. The Appellant did not meet the criteria required for an exception set out in SFCC § 14-5.2(C)(5)(b) to permit the use of green stucco color on the Building.
21. The HDRB Findings of Fact and Conclusions of Law accurately reflect the facts in this matter as presented at the Hearing.

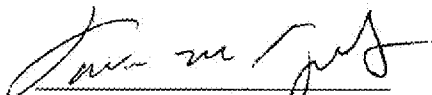
CONCLUSIONS OF LAW

Under the circumstances and based upon the Record and the evidence and testimony submitted at the hearing, the Governing Body CONCLUDES as follows:

1. The Governing Body has the power and authority to hear and decide the matter that is the subject of the Appeal.
2. The Appellant has not met all the criteria for an exception to permit the use of green stucco on the Building.
3. The Governing Body affirms the Findings of Fact and Conclusions of Law of the HDRB and adopts them as its own.

WHEREFORE, IT IS ORDERED ON THE 9th OF MARCH 2016 BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

1. That the Appeal is denied.
2. That the Appellant is not granted an exception to have green stucco on the exterior of the Building at 1244 Camino de Cruz Blanca.

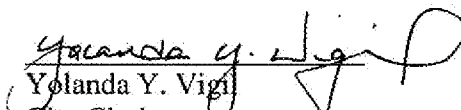


Mayor

3/17/16

Date:

FILED WITH THE CITY CLERK:

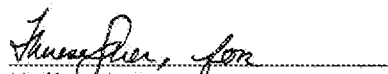


Yolanda Y. Vigil
City Clerk

3-18-16

Date:

APPROVED AS TO FORM:



Kelley A. Brennan
City Attorney

3/3/2016

Date: